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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/082,960	05/22/1998	ANN M. WOLLRATH	06502.0111-0	3411

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EXAMINER

LAO, SUE X

ART UNIT PAPER NUMBER

2151

DATE MAILED: 09/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

prk

Office Action Summary

Application No.
09/082,960

Applicant(s)
Wollrath, et al

Examiner
S. Lao

Art Unit
2151



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 1, 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-63 is/are pending in the application.
- 4a) Of the above, claim(s) 44-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34-43 and 53-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2,8,9,14 6) ☐ Other:

DETAILED ACTION

1. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 34-63 are pending. This action is in response to the Response filed 3/1/2002. Applicant has elected Group I, consisting of claims 34-43 and 53-63. Applicant is required to cancel the non-elected claims (claims 44-52) in the next response.

3. Applicant cited two co-pending applications on pages 1 and 9. Please update them into U. S. application serial numbers. These applications are not checked. Applicant is invited to inform the examiner if any of the co-pending applications are particularly relevant to / conflicting with the current application. Applicant is required to maintain a clear line of demarcation between applications. See MPEP § 822.

4. Claims 39, 59 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 39 and 59 recite "the first code" on lines 6 and 7. There is insufficient antecedent basis for this limitation in the claims. For the purpose of art rejection, it is interpreted as "the code", as best understood and as it appears to be.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent.

6. Claims 34, 39-43, 53, 54, 59-63 are rejected under 35 U.S.C. 102(a) as being anticipated by Gaines (U S Pat. 5,961,582).

As to claims 34 and 54, Gaines teaches a method in a data processing system (distributed execution environment 301, fig. 3A and fig. 1) having a first program (virtual application on each server host computer 101 such as first server host) containing code (transferable program 302 including elements of user interface 203) and having a second program (virtual application on each server host computer 101 such as second server host), the method comprising the steps of: providing a first abstract computing machine (virtual operating system 141 executing on each/first server host 101) to the data processing system; providing a second abstract computing machine (virtual operating system 141 executing on each/second server host 101, another/separate instance of virtual operating system 141) to the data processing system; running the first program on the first abstract computing machine (execute virtual application / execute transferable program 302 on first server host); running the second program on the second abstract computing machine (execute virtual application / execute transferable program 302 on second server host); sending (transfer) a portion of the code (transferable program 302) from the first program to the second program (from first to second server hosts); and running the portion of the code by the second program on the second abstract computing machine (execute program 302 at second server host). See col. 6, lines 22-46; col. 12, line 50 - col. 14, line 65; in particular, col. 14, lines 15-27.

As to claims 39 and 59, Gaines teaches first/second computer system with a first/second processor (multiple host machines 101 in fig. 3A, each executing the virtual OS 141 on a processor, fig. 1), the second program has second code (transferable program 302 including user interface 203 transferred to and executing on each server host),

receiving the first/second code by the first/second abstract computing machine (process control filter 151 for interprocess communication between first and second hosts); converting (translate) the first/second code into a format suitable to the first/second processor by the first/second abstract computing machine (translate virtual request to request for actual resources); executing the first/second code in the format suitable to (use actual resource such as file system 105). See col. 6, lines 29-36, 42-46; col. 7, lines 15-30; fig. 1.

As to claims 40 and 60, Gaines teaches providing the first/second abstract computing machine to the first/second computer system (multiple host machines 101 in fig. 3A, each executing the virtual OS 141). See col. 12, line 50 - col. 14, line 65.

As to claims 41 and 61, Gaines teaches in a same manner (run programs in a host independent manner, relatively uniform environment in which program executes). See col. 4, lines 14-19; col. 5, lines 14-18.

As to claims 42 and 62, note discussion of claim 34 for first abstract computing machine, second abstract computing machine, running a first program on the first abstract computing machine and running second program running on the second abstract computing machine. Claims 42/62 differs from claims 34/54 in that the code is transferred from the second to the first programs, which is met by the distributed execution environment 301 of Gaines wherein each of the multiple server hosts are similarly configured and operated with virtual OS and program 302 is transferred and executed from one host to another host and further to another host. See col. 12, line 50 - col. 14, line 65; in particular, col. 14, lines 15-27.

As to claims 43 and 63, note discussions of claims 34 and the portion of code (program 302) in Gaines is received before executed at the second host.

As to claim 53, note the discussions of claims 34 and 41.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior

art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 35-38, 55-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gaines as applied to claims 34 and 54 and further in view of Priven et al (U S Pat. 5, 327,559).

As to claims 35 and 55, Priven teaches sending an object (CIP object 702) containing a portion of code (action 706) of one program to another program for remote execution in a distributed execution environment. See fig. 7A and denoting text. Given the teaching of Priven, it would have been obvious to send an object containing the portion of the code to the second program. In so doing, the platform-independence of messaging in Gaines would have been enhanced by the self-describing nature of the message format of Priven (col.12, lines 34-47).

As to claims 36 and 56, Gaines as modified teaches (Priven) sending data (parameters 708) for remote execution. See fig. 7A and denoting text. Note discussion of claim 35 for a motivation to combine.

As to claims 37, 38, 57 and 58, Gaines teaches the second/first program has a function (program 302 in each server host computer 101), invoking the function by the first/second program (for execution on a server host computer 101). See col. 14, lines 15-27; fig. 3A, 3B. Priven teaches that, between two distributed programs, code (action 114) is part of an object (CIP object 702), passing the object as a parameter to a function (remote processing by application 1116) and returning the object as a result of (send response to sending system). See fig. 7A; col. 8, lines 12-24; col. 10, lines 6-25. Note discussion of claim 35 for a motivation to combine.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue Lao whose telephone number is (703) 305-9657. A voice mail service is also available at this number. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7238 for After Final communications, (703) 746-7239 for Official communications and (703) 746-7240 for Non-Official/Draft communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.

Sue Lao



August 23, 2002